

OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS

Marcia M. Waldron  
Clerk

FOR THE THIRD CIRCUIT  
21400 United States Courthouse  
601 Market Street  
Philadelphia PA 19106-1790

Tele  
267-2

www.ca3.uscourts.gov

August 16, 2002

Mrs. Mary D'Andrea  
U.S. District Court for the Middle District of Pennsylvania  
Middle District of Pennsylvania  
228 Walnut Street  
Room 1060  
Harrisburg, PA 17108

RECEIVED  
HARRISBURG, PA

AUG 20 2002

RE: Docket No. 01-3937

Kreiger vs. PA Ofc Atty Gen

D. C. CIV. No. 00-cv-02094

*Mary J. Imeson*

MARY E. D'ANDREA, CLERK  
Per *[Signature]*

Dear Mrs. D'Andrea:

Enclosed is a certified copy of the judgment in the above-entitled case(s), together with copy of the opinion. The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

(X) We release herewith the certified list in lieu of the record.

Kindly acknowledge receipt for same on the enclosed copy of this letter.

Counsel are advised of the issuance of the mandate by copy of this letter. A copy of the certified judgment is also enclosed showing costs taxed, if any.

Very truly yours,  
MARCIA M. WALDRON  
Clerk

*Anthony Infante*  
By: Anthony Infante  
Case Manager

Enclosure

cc:

*George T. Bando*  
*8/20/02*  
Anser Ahmad, Esq.  
Daniel J. Doyle, Esq.

(22)  
8-22-02  
SC

UNITED STATES DISTRICT COURT  
FOR THE THIRD CIRCUIT

\_\_\_\_\_  
No. 01-3937  
\_\_\_\_\_

FILED  
HARRISBURG, PA

AUG 20 2002

ELISA E. KREIGER,

Appellant **MARY E. D'ANDREA, CLERK**  
Per ES

v.

PENNSYLVANIA OFFICE OF THE ATTORNEY GENERAL

\_\_\_\_\_  
On Appeal from the United States District Court  
for the Middle District of Pennsylvania  
Civil Action No. 00-cv-02094  
Honorable J. Andrew Smyser, U.S. Magistrate Judge  
\_\_\_\_\_

Submitted Under Third Circuit LAR 34.1(a)  
July 12, 2002  
\_\_\_\_\_

Before: SCIRICA and GREENBERG, Circuit Judges, and FULLAM, District Judge\*

\_\_\_\_\_  
JUDGMENT  
\_\_\_\_\_

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted under Third Circuit


\_\_\_\_\_  
\*Honorable John P. Fullam, Senior Judge of the United States District Court for the Eastern District of Pennsylvania, sitting by designation.

LAR 34.1(a) on July 12, 2002.

After consideration of all contentions raised by the appellant, it is

ADJUDGED and ORDERED that the judgment of the District Court entered on September 24, 2001 be and is hereby affirmed. Costs taxed against appellant. All in accordance with the Opinion of the Court.

ATTEST:

  
Acting Clerk

Dated: 25 July 2002

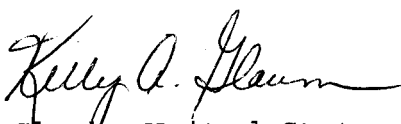
**Costs Taxed in Favor of the Attorney General of Pennsylvania as follows:**

**Total for Brief.....\$37.80**

**Total.....\$37.80**

Certified as a true copy and issued in lieu  
of a formal mandate on August 16, 2002

Teste:

  
Acting Clerk, United States Court of Appeals  
for the Third Circuit

**NOT PRECEDENTIAL**

UNITED STATES DISTRICT COURT  
FOR THE THIRD CIRCUIT

\_\_\_\_\_  
No. 01-3937  
\_\_\_\_\_

ELISA E. KREIGER,

Appellant

v.

PENNSYLVANIA OFFICE OF THE ATTORNEY GENERAL

\_\_\_\_\_  
On Appeal from the United States District Court  
for the Middle District of Pennsylvania  
Civil Action No. 00-cv-02094  
Honorable J. Andrew Smyser, U.S. Magistrate Judge  
\_\_\_\_\_

Submitted Under Third Circuit LAR 34.1(a)  
July 12, 2002  
\_\_\_\_\_

Before: SCIRICA and GREENBERG, Circuit Judges, and FULLAM, District Judge\*

(Filed: July 25, 2002)

\_\_\_\_\_  
\*Honorable John P. Fullam, Senior Judge of the United States District Court for the Eastern District of Pennsylvania, sitting by designation.

FILED  
HARRISBURG, PA

AUG 20 2002

MARY E. D'ANDREA, CLERK  
Per [Signature]

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OPINION OF THE COURT

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PER CURIAM:

Appellant sued her former employer, the Pennsylvania Office of the Attorney General, for violating her rights under the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*, and the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2601, *et seq.*, and for causing her emotional distress by terminating her employment. The magistrate judge to whom the case was assigned with the consent of the parties granted the defendant’s motion to dismiss, because the Office of Attorney General is an agency of the Commonwealth of Pennsylvania, 71 P.S. § 732-201, and is immune from suit in federal court by reason of the Eleventh Amendment of the United States Constitution. This appeal followed.

It is clear that the magistrate judge was correct. The United States Supreme Court has squarely held that the ADA did not validly abrogate the Eleventh Amendment immunity of states and their agencies. *Board of Trustees of the University of Alabama v. Garrett*, 521 U.S. 356, 121 S.Ct. 55 (2001). *See also, Lavia v. Commonwealth of Pennsylvania*, 224 F.3d 190 (3d Cir. 2000). Plaintiff contends that the *Garrett* decision is “unconstitutional” and should be reconsidered. Needless to say, this court has no authority to overrule a decision of the United States Supreme Court.

Appellant concedes that her claim under FMLA is barred by the Eleventh

Amendment, as this court decided in *Chittister v. Department of Community & Econ. Development*, 226 F.3d 223 (3d Cir. 2000).

Plaintiff further argues that she should be permitted to pursue claims for equitable relief. This, too, is an erroneous view of the law. The Eleventh Amendment bars claims against state agencies “regardless of the nature of the relief sought.”

*Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 100 (1984); *see also* *Puerto Rico Aqueduct & Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993).

The judgment appealed from will be affirmed.

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TO THE CLERK:

Please file the foregoing opinion.

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District Judge